IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8898 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MANOJ @ RAKESH @ MANOJ MORKAR NATVARLAL TAILOR

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 8898 of 2001

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

MR MRS. HANSABEN PUNANI for Respondents No. 1-3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 04/12/2001

ORAL JUDGEMENT

By means of filing this petition, the petitioner has challenged the order of detention dated 15-5-2001 passed by the Police Commissioner, Surat City.

2. It is a settled principle of law that in order to bring a person within the expression "dangerous person" as defined in clause (c) of section 2 of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short `the Act of 1985'), there should be positive materials to indicate that such person is habitual of committing or attempting to commit or abetting the commission of offences which are punishable under Chapter XVI or XVII of Chapter V of the Arms Act and that single or isolated act falling under the said Chapters cannot be characterized as a habitual acts as envisaged in section 2(c) of the PASA Act. Further, besides a person being a dangerous person, his activities should also fall within the ambit of expression `public order'. A distinction has to be drawn between the `law and order' and `maintenance of public order'. A reference may be made of M.J.Shaikh V. M.M. Mehta, Commissioner of Police & Ors., reported in 1995 (2) GLR 1268.

3. I have heard learned advocate for the petitioner and also perused the material on record. The learned advocate for the petitioner, has submitted that the petitioner been arrested by the detaining authority vide order dtd. 15/5/2001 and branded as "dangerous person" replying upon two offences being [1] I-CR No.374 of 1999 registered before the Varachha Police Station for the offences punishable under Sections 387, 506, 114 and 120(B) of Indian Penal Code and [2] I-CR No.27 of 2001 registered with DCB Police Station for the offence punishable under Sec.120(B), 387, 596(2), 144 and 511 of Indian Penal Code. The detaining authority also recorded statements of two independent witnesses on 7/5/2001 and 8/5/2001 and verified the same on 11/5/2001 and claimed privilege under Sec.9(2) of PASA Act. The learned advocate for the petitioner has further submitted that the petitioner has made representation through his advocate to the Deputy Secretary, Home Secretary, State of Gujarat, Sachivalaya, Gandhinagar by RP.A.D. on 21/9/2001 which has been received by the said authority on 24/9/2001 and acknowledgment receipt of the same is produced on record at page No.28 of compilation. The authority has decided the representation on 3/10/2001 and copy of its decision has been communicated to the detenu on 12/10/2001. Thus, therefore, there is a delay of 9 days in considering the representation, which is not explained by any of the authorities, which is illegal and on this ground, the impugned order of detention is required to be quashed and set aside. In support of his submission, the learned advocate for the petitioner has placed reliance upon the decision of Supreme Court

reported in AIR 1999 S.C. 684. Learned APP for the State, Mrs.Hansa Punani has fairly admitted that there is delay of 9 days in considering the representation which remains unexplained.

In view of the above facts and circumstances, it is established from the record that there is a delay of 9 days in deciding the representation which remains unexplained. The Hon'ble Supreme Court in the case of RAJAMAL VS. STATE TAMIL NADU AND ANR. reported in AIR 1999 SC 684, in para 9 has held as under :-

> "9. The position, therefore, now is that if delay was caused on account of any indifference or lapse in considering the representation such delay will adversely affect further detention of the petitioner. In other words, it is for the authority concerned to explain the delay, if any, in disposing the representation. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned."

5. Further, herein the present case even no affidavit has been filed either by the detaining authority or the State of Gujarat. It has been held in a judgment delivered by this Court in the case of Ashokbhai Jivraj @ Jivabhai Solanki Vs. Police Commissioner, Surat and Ors. reported in 2000(1) G.L.H. 393 as under:

> "Before parting with the matter, we may observe that recently, we have come across few cases wherein no counter-affidavits are filed by the respondents. It is settled law that whenever an order of detention is challenged by a detenu or by his "next friend", it is the duty of the authorities to justify the action by filing counter-affidavit preferably by the detaining authority himself, unless there are circumstances which may justify filing of affidavit by an officer or authority other than the detaining authority".

6. Since there is a delay in considering the representation of the detenu and no affidavit has been filed either by the detaining authority or the State, the

order of detention is illegal and the same cannot be sustained. Learned advocate for the petitioner does not press any other points.

7. The petition is allowed. The impugned order of detention dated 15/5/2001 passed against the detenu is hereby quashed. The detenu namely Manoj alias Rakesh alias Manoj Morkar Natvarlal Tailor is set at liberty forthwith, if not required to be detained in any other case. Rule is made absolute with no order as to costs.

(R.P.DHOLAKIA,J.)

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